Estate Administration in Singapore
– Civil law *vs* Islamic law

Suhaimi Salleh
FCPA, FCMC, PMC, AFP
Barakah Capital Planners Pte Ltd
www.barakahcapital.com

Islamic Law in Singapore

- Governed by Administration of Muslim Law Act (AMLA)
- Under AMLA, Islamic law prevails over civil law in matters of marriage, divorce, guardianship and inheritance of Muslims in Singapore
- *Eg Section 111(1) of AMLA stipulates that '<u>notwithstanding</u> anything in the provisions of the English law or in any other written law, <u>no Muslim</u> domiciled in Singapore shall, after 1st July 1968, <u>dispose of his property by Will except in accordance with</u> the provisions of and subject to the restrictions imposed by the school of <u>Muslim law</u> professed by him'.*
- All other aspects – civil law applies.

Muslim Inheritance in Singapore

- Estate distribution of a deceased Muslim person who was domiciled in Singapore at the time of death will be governed by Islamic law of Inheritance *(faraid)* and to a certain extent, Malay custom.
- AMLA S112(1) – *In the case of any Muslim person domiciled in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim law as modified, where applicable, by Malay custom.*
- AMLA S112(3) – *In the case of a Malay dying intestate, the court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit.*

Muslim Inheritance in Singapore

- Where there is a conflict of laws in matters other than those covered by AMLA – eg joint tenancy, insurance and CPF nominations – the general rule is that civil law prevails over Islamic law.
  But as believers, Muslims are obliged to abide by the Islamic rulings.
- The Intestate Succession Act is not applicable to the estate of Muslims.
- The equivalent of the Intestate Succession Act for Muslims is *faraid*.

Civil Law vs Islamic Law

Civil Law

- Without a will – 100% of estate by Intestate Succession Act
- Intestate Succession Act does not apply to Muslims

Islamic Law

- Without a will – 100% of estate will be distributed according to *faraid*
- *faraid* pre-determines the share of spouse, children, mother and father

Faraid – The Islamic law of inheritance
Basis: The Qur'an: An-Nisa (Cap 4) Verse 11-12

- 11. Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah. And Allah is All-knowing, All-wise.
- 12. In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah. And Allah is All-knowing, Most Forbearing.

Faraid

- Automatic Faraid Heirs
  - Parents
  - Spouse
  - Children
- When the deceased leaves no son or father:
  - Part of estate will go to his siblings
- When the deceased leaves no faraid heirs:
  - Estate goes to BaitulMal, an Islamic charitable trust administered by MUIS
- Faraid heir forfeits his claim under the following circumstances:
  - he caused the death of the deceased; or
  - he is not a Muslim; or
  - if he has renounced Islam.

Civil Law

- The whole wealth can be distributed according to one's wishes through a Will.

Islamic Law

- Will must be in accordance with Syariah
- Can dispose of only up to **1/3** of estate by Will and only in favour of non-*faraid* heirs. The balance must be distributed via *faraid*
- Agreement by faraid heirs can however validate a non-valid will

Civil Law

- Can dispose all assets during lifetime as well as after death.

Islamic Law

- Can dispose any assets as gifts during lifetime only, but equity is encouraged.
- Gifts that are given after death will be subject to *faraid* ruling.

Civil Law

- Legitimated when parents married and inherits estate as any legitimate child
- If not legitimated, inherits all of mother’s estate if mother has no legitimate children. If mother has other legitimate children, cannot inherit under intestacy law.

Islamic Law

- Child is considered illegitimate when he is conceived before marriage
- Cannot inherit father’s or sibling’s estate, even if legitimated by civil law
- Can inherit mother’s estate even if he has other legitimate siblings
- Can be included in will – up to 1/3 of estate

Adopted Child

Civil Law

- A legally adopted child can inherit under Intestacy laws

Islamic Law

- A legally adopted child has no right to inheritance if the adoptive parents die intestate.
- Can be included in will – up to 1/3 of estate
- However entitled to a share of his natural parents' estate.
- His natural parents/siblings are also entitled to a share of his estate.
- His adoptive parents are not entitled to his estate if he predeceases them.

- Under faraid, a non-Muslim is not eligible to inherit the estate of a deceased Muslim relative.
- A Muslim can however will up to 1/3 of his estate to his non-Muslim heirs.
- Part or all of a Muslim convert's estate may go to *Baitul Mal* if he does not have a male heir.

Joint Tenancy

Civil Law

The surviving party will own the property absolutely, based on the rights of survivorship principle.

Islamic Law

- In a 2-party joint tenancy, the surviving tenant will only own 1/2 plus her *faraid* share of the property
- eg Wife gets (1/2 + 1/4 of ½ = 5/8) of property if deceased has no children

CPF Nominations

Civil Law

- Nominees have full rights to the CPF balance of the deceased
- *Case: Saniah bte Ali & Ors v Abdullah bin Ali*

Islamic Law

- Nominees are considered **trustees** to the estate of the deceased.
- Basis: The trust is created after death. Hence CPF monies are considered part of estate.
- Faraid distribution applies.

CPF Act: S24(3A) - All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of … (the nominees) … .

Insurance Nominations

Civil Law

- Nominees named as beneficiaries will inherit the insurance proceeds
- S73 CLPA Policies – Proceeds will go to spouse and/or children if bought for their benefits. A statutory trust is automatically created in favour of the beneficiaries.

Islamic Law

- Nominees (other than spouse/children) named as beneficiaries are considered as trustees to the estate
- S73 CLPA Policies – Life insurance policies considered as a <u>trust</u> created at date of purchase. Proceeds will go to spouse and/or children as specified and NOT to estate
- Issue whether the policies are Islamic or not remains.

Conveyancing & Law of Property Act S73(1) : A policy of assurance effected by any man on <u>his own life</u> and expressed to be for the benefit of his <u>wife</u> or of his <u>children</u> or of his wife and children or any of them… <u>shall create a trust</u> in favour of the (wife and /or children) …

Revocable/Irrevocable Insurance Nominations

Civil Law

Revocable Nominations

- Nominated beneficiaries entitled to the insurance proceeds

Irrevocable Nominations

- Create a statutory trust in favour of beneficiaries, similar to S73 of CLPA.
- Can only change if all beneficiaries agree.

Islamic Law

Revocable Nominations

- Nominated beneficiaries considered as trustees to the insurance proceeds

Irrevocable Nominations

- Effect similar to civil law

Jointly Acquired Property (Harta Sepencarian)

- AMLA S112(3) – *In the case of a Malay dying intestate, the court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit.*
- Wife may claim *harta sepencarian* before *faraid* division of estate
- In Malaysian court cases, share of *harta sepencarian* to the wife can range between 1/3 to ½
- So far, no reported cases on S112(3) of AMLA.

Date of Death

Hibah (Gift) Charity Nazar (Vow) Trust Waqf (Charitable Endowment)	Jointly Acquired Property (Harta Sepencarian)
	Last and Funeral Expenses
	Debt to God (Zakat, Kaffarah, Fidyah, Haj)
	Debt to Man
	Will to Non-Faraid Heirs (up to 1/3)
	Faraid Heirs(not less than 2/3)